IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 158 of 1985
WITH
INCOME TAX REFERENCE No 158A of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MEHSANA DISTRICT CO-OP. MILK PRODUCERS' UNION LTD.

Appearance:
MR BB NAIK FOR MR MANISH R BHATT for Petitioner
MR MJ SHAH FOR MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/03/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

INCOME TAX REFERENCE NO.158 OF 1985.

1. For the assessment year 1975-76, the Commissioner of Income Tax, Gujarat II, Ahmedabad is applicant before us. The Income Tax Appellate Tribunal at the instance of the revenue made Reference to the Court raising following two questions :

"1. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has been right in law in holding that the assessee is entitled to deduction of Rs.13,358/- being the guest house expenses and Rs.23,422/- being the entertainment expenses ?"

"2. Whether the Income-tax Appellate Tribunal has been right in law in holding that in computing the relief under sec.80J of the Income-tax Act,1961 cost of Rs.12,28,595/- representing work in progress and machinery not installed was not deductible from the cost of fixed assets?"

2. Question No.1 is in two parts : (i) deduction of Rs.13,358/- being the Guest House expenses being allowable and (ii) Rs.23,422/- the amount of entertainment expenses being allowable. The Tribunal was of the view that the assessee is entitled to get deduction. This question does not require any further discussion in view of the decision of the Apex Court in the case of Commissioner of Income-Tax V. Patel Brothers and Co.Ltd. and Others, reported in 215 ITR 165. Before the Court the question raised was whether, on the facts and in the circumstances of the case, the expenditure in question was in the nature of entertainment expenditure in law ? Considering the decision and the facts of the case the Court has decided answer in favour of the assessee and against the revenue.

3. So far as the amount with regard to the Guest House Allowance is concerned, the question raised by the Revenue is covered by the decision of this Court in the case of Commissioner of Income-Tax V. Maharana Mills Ltd., reported in 208 ITR 294. However, during the assessment year and further years it is difficult to say that the amount was spent for maintenance of the Guest House. In absence of any material we are not in a position to answer the question, and therefore, we decline to answer the question about the amount

pertaining to the Guest House expenses.

4. So far as the second question is concerned, the same requires no more debate in view of the binding decision of the Apex Court in the case of Commissioner of Income Tax V. Alcock Ashdown And Co. Ltd., reported in 224 ITR 353, wherein the Apex Court while affirming the decision of the High Court has held that the amount of Rs.21,17,178/-, representing the value of plant and machinery yet to be installed and the cost of workshops under construction, could be taken into account in determining the capital employed in the undertaking at Bhavnagar for the purpose of granting relief to the company in terms of section 84 of the Income-tax Act,1961 for the assessment year 1962-63.

5. In view of the fact that section 84 is now replaced by section 80J for which the aforesaid principle will apply and answer would be in favour of the assessee and against the revenue. Answered accordingly.

INCOME TAX REFERENCE NO.158A OF 1985.

6. While deciding Income Tax Reference No.158 of 1985 it is also found that at the instance of the assessee, The Income Tax Appellate Tribunal, Ahmedabad for the assessment year 1975-76, has made Reference raising three questions. At the instance of the assessee Reference was made. The assessee also submitted Paper Book but it appears that the Registry after giving number to the Reference at the instance of Commissioner of Income Tax deleted the name of Mehsana District Cooperative Milk Producers' Union Ltd. Under the circumstances, the Registry is directed to give Reference No. 158A to the Reference at the instance of the assessee Mehsana District Cooperative Milk Producers' Union Ltd., Mehsana. It is required to be noted that separate statement of case is available in the Paper Book at the instance of the assessee at page no.9. The questions referred are as under :-

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in holding that the assessee is not entitled to depreciation on roads in the factory premises at the rates applicable to 'Plant'?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is correct in holding that assessee is not entitled to depreciation and development rebate on Plant and Machineries worth Rs.23,93,100/- received from Indian Dairy Corporation ?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law, in holding that the value of Plant and Machinery worth Rs.23,93,100/- received from Indian Dairy Corporation was not to be included in computation of capital employed for the purposes of granting relief u/s. 80J?"

7. The Apex Court in the case of Commissioner of Income Tax V. Gwalior Rayon Silk Manufacturing Co.Ltd., reported in 196 I.T.R. 149 examined the question whether the roads and drains laid within factory premises are necessary adjuncts to factory buildings and are to be treated as 'Building' for purposes of depreciation. The Court pointed out that roads laid within factory premises as links or providing approach to the buildings to carry on the business activity of the assessee are 'buildings' within the meaning of section 32 of the Income-tax Act,1961. In view of the aforesaid, the assessee is not entitled to depreciation on roads in the factory premises at the rates applicable to plant, and therefore, Question No.1 is answered against the assessee and in favour of the revenue.

8. So far as Question Nos. 2 and 3 are concerned the same are covered by various decisions of this Court including assessee's own case vide Income Tax Reference No.290 of 1984 decided on 24/12/1999. Therefore, we answer Question No.2 in favour of the assessee and against the revenue. So far as question no.3 is concerned, we answer in favour of the revenue and against the assessee. Answered accordingly.

Sd/- Sd/-
(B.C.Patel, J) (D.A.Mehta,J)

m.m.bhatt